

CC97-164

LOW TECH DESIGNS, INC.^(tm)

ORIGINAL

July 9, 1997

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William Caton
Acting Secretary
Federal Comm. Comm.
1919 M. St., N.W.
Rm. 222
Washington, DC 20554

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FCC MAIL ROOM

Please find enclosed three petitions for FCC assumption of jurisdictions over arbitrations between Low Tech Designs, Inc., and incumbent local exchange carriers.

Low Tech Designs, Inc. is requesting that the FCC assume jurisdiction and consolidate these proceedings. The issues in the arbitrations are essentially the same, are narrowly focused, and relate to services that will most probably require some form of FCC intervention in the future.

Low Tech Designs, Inc. has been frustrated for almost a year now in its negotiations with incumbent LEC's. Because it is a small entity with limited resources, Low Tech hopes that Commission assumption and consolidation of these arbitrations will provide Low Tech with an opportunity to conserve legal and business resources while resolving the issues between the parties in an expeditious manner.

I have enclosed one copy of each petition marked "Stamp and Return". Please date stamp these copies and return them in the preaddressed and stamped envelope.

Thank you for your assistance with this matter.

Sincerely,



James M. Tennant
President
Low Tech Designs, Inc.
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Georgetown, SC 29440

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"Bringing Technology Down to Earth"^(sm)

CC 97-164

ORIGINAL

Before the
FEDERAL COMMUNICATIONS COMMISSION
Washington, D.C. 20554

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In the Matter of

Petition for Commission Assumption
of Jurisdiction of Low Tech Designs, Inc.'s
Petition for Arbitration with BellSouth Before the
Georgia Public Service Commission

JUL 11 1997

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PETITION FOR COMMISSION ASSUMPTION OF JURISDICTION

Low Tech Designs, Inc. ("LTD") submits this petition for Commission assumption of jurisdiction of arbitration pursuant to Section 252(e)(5) of the Telecommunications Act of 1996 ("the Act"). LTD contends that the Georgia Public Service Commission ("GPSC") has failed to fulfill its duty to arbitrate failed negotiations between LTD and BellSouth Telecommunications, Inc. ("BST") under Section 252(b) of the Act. LTD seeks FCC assumption of GPSC jurisdiction of the arbitration between LTD and BST.

STANDING AND BACKGROUND

1. LTD is a new entrant requesting telecommunications carrier attempting to enter the local telecommunications services market. LTD has stated its intention, to all parties, to offer resold local exchange services and new telecommunication services using unbundled network elements. LTD considers itself to be a telecommunications carrier as defined and anticipated by Sections 3(49) and 252(a)(1) of the Act respectively, and applicable FCC rules and interpretations.

2. LTD commenced negotiations with BST, as an enhanced service provider, in October of 1995. At that time, LTD entered into a mutual non-disclosure agreement with BST to discuss potential Advanced Intelligent Network services.

3. After the August 8, 1996 release of the FCC's "First Report and Order" (FCC 96-325) implementing the local competition provisions of the Act, LTD became

aware of the duty of incumbent LEC's (ILEC's) to negotiate in good faith, under Sections 251(b) and (c) of the Act, with a requesting telecommunications carrier, prior to the carrier first obtaining state certifications (see 47 CFR 51.301(c)(5)). LTD viewed this ILEC duty as supporting LTD's legal basis for entering into negotiations with BST under the Act. In the opinion of LTD, this duty also provided a cornerstone of LTD's legal basis for obtaining arbitration of failed negotiations before State Commissions, if necessary, prior to obtaining State certification.

4. LTD initiated formal negotiations with BST in Georgia as a competitive LEC on August 12, 1996. BST acknowledged LTD's request on August 19, 1996, stating it was ready to begin negotiations with LTD. At the time it initiated negotiations with BST, LTD was a new entrant telecommunications carrier not certificated in Georgia.

5. On or about January 16, 1997, after unproductive negotiations with BST characterized by their general failure to negotiate in good faith, LTD filed a timely "Petition for Arbitration" ("Petition") with BST before the GPSC. The case was assigned Docket No. 7270-U.

6. On May 19, 1997, in response to a late filed "Answer and Motion to Dismiss"¹ by BST, the GPSC issued an "Order Dismissing Arbitration" ("Order"), citing what it considered to be LTD's lack of showing that it was a "telecommunications carrier" seeking to offer a "telecommunications service" (Order at pg. 3). The GPSC properly rejected BST's restrictive argument that LTD must be actively providing a telecommunications service, even in another jurisdiction, before it qualified as a telecommunications carrier eligible to enforce Section 251 and Section 252 requirements thru compulsory arbitration (Order at pg. 4). The GPSC also properly

¹ In their "Motion to Dismiss Arbitration" dated April 9, 1997, BST challenged LTD's status as a telecommunications carrier, even though BST first acknowledged LTD's claim as a telecommunications carrier under the Act in their initial response to LTD's Petition for Arbitration. LTD considers this action by BST as a further example of their failure to negotiate in good faith.

acknowledged that under FCC rules, a telecommunications carrier may initiate negotiations with an ILEC without first obtaining a state certificate of authority, but noted that the FCC issued no such rule with respect to arbitrations (Order at pg. 4). The GPSC also claimed support of their Order by quoting Section 253(b) of the Act (State Regulatory Authority, Order at pg. 3).

ARGUMENT

7. LTD has always maintained that entities entitled to negotiate with incumbent LEC's under the Act should have the right to arbitrate with the incumbent LEC if negotiations were not fruitful². LTD has also viewed negotiations and arbitration as separate from state commission certification, which is properly required in order to actually obtain authority to offer telecommunications services. In the local competition rules implementing the Act, the FCC agreed with this interpretation when it removed state certification as a preliminary requirement for good faith negotiations between requesting telecommunications carriers and incumbent LEC's.

8. Since arbitrations under the Act are a legal consequence of a failure to obtain an interconnection agreement under voluntary negotiations, LTD believes that any state rules or rulings denying arbitration to a new entrant that has been in negotiations with an ILEC are in violation of Section 253(a) of the Act. Without an arbitrated agreement, a new entrant, such as LTD, is not able to take one of the first necessary steps towards offering its intended services. This has the effect of prohibiting "any entity", such as an uncertificated new entrant telecommunications

² See, in this order, Paras. 12, 32, 1402, 1401, 341, and 1336 of the FCC's "First Report and Order" (FCC 96-325) released August 8, 1996, for a logical analysis of the entry path, from negotiation to arbitration, for small new entrant telecommunications carriers. Also, see "Joint Explanatory State of the Committee on Conference", H.R. Rep. No. 458, 104th Cong., 2d Sess., Jan. 31, 1996, where, in discussing Section 251, it states "The conferees note that the duties imposed under new section 251(b) make sense only in the context of a specific request from another telecommunications carrier or any other person who actually seeks to connect with or provide services using the LEC's network". Congress clearly considered requests from existing telecommunications carriers and any other person to be equivalent for purposes of Section 251(b) duties, and also by reference in the Act, ILEC duties under Section 251(c).

carrier, the ability to offer telecommunications services, in violation of Section 253(a) of the Act.

9. Section 253(b) of the Act also requires States to impose their regulatory authority and requirements on a competitively neutral basis. In LTD's "Motion of Low Tech Designs, Inc. for Reconsideration, Rehearing and Oral Argument of Commission Order Dismissing Arbitration" ("Motion for Reconsideration"), dated May 27, 1997, LTD accused the GPSC of approving agreements between BST and new entrant telecommunications companies, without the new entrant companies first being certificated by the GPSC³. The GPSC, in administrative session on June 19, 1997, denied LTD's "Motion for Reconsideration". At the same time, it acknowledged, via a verbal confirmation by Ms. Tiane Sommer, Special Assistant Attorney General, that the GPSC had indeed approved agreements between BST and new entrant telecommunications companies, without the new entrant companies first being certificated by the GPSC. By approving agreements between an incumbent LEC and uncertificated entities, but refusing to arbitrate a failed agreement between an incumbent LEC and an uncertificated entity (LTD), the GPSC violates the "competitively neutral basis" requirement of Section 253(b) of the Act that they quote in defense of their actions. In fact, these actions by the GPSC favor ILEC's, to the extent it allows them to exaggerate their "opening of their networks" to competition.

10. There are also good business reasons why LTD, and other small new entrant telecommunications carriers, would not want to, and should not be required to, obtain state certification before arbitrations are held. In the real world, a business would typically never obtain licenses to operate a business prior to the business plan

³ This "parading of agreements" practice of ILEC's has been found by LTD to be pervasive in other States and an attempt on their part to increase their agreement "head count" with potential competitors in each jurisdiction. This tactic, involving the submission for approval of interconnection or resale agreements with entities in all ILEC jurisdictions, when the entity only plans on offering service in a single or limited number of States, causes the States that go along with this scheme to become unwitting accomplices to ILEC competitive tricks and illusions.

being complete, unless forced to do so or for other business reasons⁴. Legal and other related expenses for obtaining certification can be significant, especially for small entities. Until LTD is able to arbitrate to obtain the unbundled network elements and rates needed, it cannot with certainty say that it actually has a complete and viable business plan and will be able to offer a complete range of telecommunications services in a particular State. This may not be to the liking of the State Commissions that are called upon to arbitrate, but it is a fact of business life for new entrants.

Additionally, since a business plan cannot be completed prior to obtaining the needed network elements and associated ILEC rates, necessary capital may be unavailable until an arbitration is complete. This is certainly true in the case of LTD, which has potential investors waiting for its success in State arbitration. Since most jurisdictions expect new entrants to show substantial technical, managerial and financial capabilities, small companies with limited initial capital, still in a negotiations cycle with ILEC's, could be viewed as insufficiently capitalized to obtain certification. This could particularly be true if new entrants were relying upon the use of unbundled network elements for the provisioning of services, as is the case with LTD.

CONCLUSION AND PRAYER

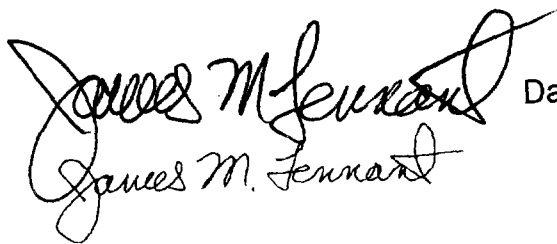
11. LTD respectfully requests that this Commission assume jurisdiction of the arbitration between LTD and BST, as authorized in Section 252(e)(5) of the Act, since the GPSC has failed to arbitrate differences between the parties as required as part of their Section 252 responsibilities under the Act.

⁴ LTD actually filed for GPSC certification prior to the dismissal of its arbitration petition on May 19, 1997. This application was, and still is incomplete, due to the inability to provide information only available after a completed arbitration. LTD filed this application for certification, under duress, only after it was obvious to LTD that the GPSC was prepared to accept BST's Motion to Dismiss without a certification application being filed. GPSC staff, in a letter dated April 24, 1997, recommended that at a minimum, LTD should have filed for certification prior to its arbitration being heard. LTD did so, albeit in an incomplete manner, and still had arbitration denied to it. This action bolsters LTD's argument before the GPSC that its decisions were capricious and arbitrary.

LTD's initial new telecommunications service proposes to utilize unbundled network elements associated with call related databases for the purposes of providing a least cost routing service for long distance calls, available without presubscription and accessed by using an abbreviated dialing code. This proposed service, while extremely consumer friendly, has been and will be violently opposed by both ILEC's seeking entry into the long distance market and existing long distance carriers. LTD has already seen what it considers to be a failure to negotiate in good faith on the behalf of ILEC's, and a general tendency to mis-characterize the nature of the service to block LTD's ability to offer it to consumers.

LTD believes that FCC assumption of the arbitration will facilitate the introduction of this old - but new to residential and small businesses - telecommunications service, with favorable implications on long distance rates paid by these consumers. Additionally, it is LTD's desire to see this arbitration combined with other arbitrations denied to LTD by State Commissions in South Carolina and Illinois with GTE South and Ameritech Illinois respectively. These assumption petitions have been filed separately for Commission consideration.

Respectfully submitted,



James M. Tennant

Date: July 9, 1997

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Affidavit

State South Carolina
County Georgetown

I hereby certify that Mr. James M. Tennant, President of Low Tech Designs, Inc., 1204 Saville St., Georgetown, SC, 29440, appeared before me, this 9TH day of July, 1997, and attested to the validity and true account of the attached PETITION FOR COMMISSION ASSUMPTION OF JURISDICTION.

Mr. Tennant has affirmed to me that he is the author of the attached document and that the facts contained within are true and based on verifiable records of the negotiations and subsequent legal actions of Low Tech Designs, Inc., BellSouth Telecommunications, Inc. and the Georgia Public Service Commission.

Notary Public:

NOTARY
PUBLIC

Jane M. Green
Com. Exp 3-24-98

Attest:

James M. Tennant
James M. Tennant

Date: 7/9/97

**CERTIFICATE OF
SERVICE**

I hereby certify that I have this day served one copy of the foregoing PETITION FOR COMMISSION ASSUMPTION OF JURISDICTION, by depositing same in the United States mail in a properly addressed envelope with adequate postage thereon to insure delivery to the following parties:

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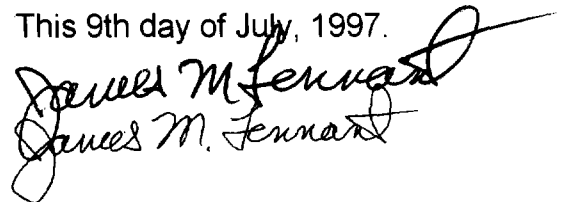
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An original and four copies were delivered, in the same manner, to:

William Caton
Acting Secretary
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This 9th day of July, 1997.



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